

Economic Impact Analysis Virginia Department of Planning and Budget

2 VAC 5-405 – Regulations for the Application of Fertilizer to Nonagricultural Lands
Virginia Department of Agricultural and Consumer Services
July 3, 2010

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 686 of the 2008 Acts of the Assembly, the Board of Agricultural and Consumer Services (Board) proposes to promulgate new regulations for the certification of fertilizer applicators. Specifically, these regulations will establish:

- The application process for becoming a certified fertilizer applicator,
- Exemptions from the requirements of these regulations for certain categories of individuals,
- Core areas of testing for certification applicants,
- The certification renewal process,
- Supervision requirements for noncertified individuals who apply fertilizer to nonagricultural lands,
- Recordkeeping requirements for fertilizer applicators and
- The \$250 civil penalty that will be assessed for to individuals who offer their services as certified fertilizer applicators without first obtaining Board certification or who supervise the application of fertilizer to nonagricultural land when they have not been certified by the Board.

Result of Analysis

There is insufficient information to ascertain whether the benefits of this proposed certification program will outweigh its costs.

Estimated Economic Impact

In 2008, the General Assembly passed a bill that requires the Board to set training requirements and proper nutrient management practices for individuals who apply fertilizer to nonagricultural land. The Board now proposes to promulgate new regulations to fulfill these legislative requirements.

The proposed regulations do not contain specifics for the training that will be required for fertilizer applicators. Instead, these regulations give the Commissioner of Agricultural and Consumer Services the authority to approve courses of training and allow individuals who have complete a non-approved training program that is comparable to those that are approved to petition for program approval. The Virginia Department of Agricultural and Consumer Services (VDACS) reports that no training courses have been approved yet and that the Board is still contemplating the appropriate scope of the training that will be required. These regulations will specifically require two hours of continuing education every two years which VDACS estimates will cost approximately \$100 per certificate holder and that the training for individual fertilizer applicators will cost approximately \$50. Although VDACS does not know yet how many hours of initial training will be required for certified fertilizer applicators, they estimate that this training will cost approximately \$500 per person. Certification is valid for four years from the date it is issued and then must be renewed by making application to VDACS and providing proof of completed continuing education.

Pursuant to Chapter 686, affected individuals will have 12 months after the effective date of these regulations to comply with the mandates of both the regulations and the relevant legislative code. After that point, and with three exceptions, any business that applies fertilizer to nonagricultural land will have to employ at least one certified fertilizer applicator or contract with a certified fertilizer applicator for his services. Other employees who have gone through individual applicator training will be able to apply fertilizer independent of the supervision of a certified fertilizer applicator. Employees who have not undergone the individual applicator training will only be able to work under the direct supervision of a certified fertilizer applicator. These regulations allow three exemptions from these requirements; individuals will not have to become certified if 1) they are conducting research in laboratories or field test plots involving fertilizer, 2) they are employees and only apply fertilizer to land belonging to their employer or

3) they already have a turf and landscape certification from the Department of Conservation and Recreation. After the point in time that landscaping businesses and any other business that applies fertilizer would be required to comply with these regulations, VDACS will assess a \$250 fine to anyone who offers their services as certified fertilizer applicators without first obtaining Board certification or who supervises the application of fertilizer to nonagricultural land when they have not been certified by the Board. VDACS will also assess the \$250 fine to any business that does not comply with the recordkeeping requirements of these regulations.

These regulations, and the legislation that mandates them, will likely increase costs for businesses that offer services that include spreading fertilizer on nonagricultural land. These costs will likely include higher wage costs since they will be required by law to have at pay for the services of a certified fertilizer applicator. This will allow them less flexibility to hire the mix of employees that they believe will allow them to provide services in the most efficient way possible. They will likely also incur recordkeeping costs because these proposed regulations will require businesses to keep very specific records of any jobs that include the application of fertilizer for at least three years. These records will have to include:

- The name, mailing address and phone number of the customer as well as the address where the fertilizer was applied,
- Name of the person applying the fertilizer or supervising the application,
- Day, month and year of the application,
- Weather conditions at the start of the application,
- Acreage, area, square footage or number of plants treated,
- Analysis of fertilizer applied,
- Amount of fertilizer used by weight of volume and
- Type of application equipment used.

The aim of these proposed regulations is to reduce water pollution that can be traced to the misapplication and over-application of fertilizer to nonagricultural lands. Whether the benefits of these regulations outweigh the costs will largely depend on whether the forgone costs

of prevented pollution are greater in magnitude than the costs that will be imposed on the affected businesses and individuals.

Businesses and Entities Affected

VDACS reports that there are approximately 1,000 individuals who have VDACS issued permits that allow them to distribute and/or apply fertilizer. Older information from the Virginia Employment Commission (VEC) indicates that there were approximately 2,500 landscaping businesses in the Commonwealth as of the fourth quarter of 2007. This information from the VEC, although older, indicates that there is likely a large population of affected entities who do not currently hold permits from VDACS and may not know that they will be subject to these proposed regulations. Most of the affected businesses likely meet the requirements to be classified as small businesses.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment

The costs that businesses will likely incur to comply with this legislatively mandated certification program may cause some of these businesses to close, particularly if they are only marginally profitable. The landscaping businesses that remain may choose to employ fewer people because their costs will be higher.

Effects on the Use and Value of Private Property

This regulatory action will likely increase the costs for businesses that apply fertilizer to nonagricultural lands. Other factors held constant, these increasing costs will likely raise the price of landscaping services and decrease the quantity demanded for these services. These likely changes in business costs and quantity demanded mean that the profits, and therefore the value, of affected landscaping businesses may decrease by a small amount after these certification requirements go into effect.

Small Businesses: Costs and Other Effects

Affected small businesses in the Commonwealth will incur costs for training and testing as well as for complying with recordkeeping requirements.

Small Businesses: Alternative Method that Minimizes Adverse Impact

VDACS can minimize the adverse impact of this certification program by only requiring training that is absolutely necessary to meet the legislature's goal of reducing pollution caused by nonagricultural application of fertilizer.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.